IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1107 of 2007 (O&M)

DATE OF DECISION : 16.04.2007

Satish Kumar

.... APPELLANT

Versus

Vinod Kumar and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Manish Bansal, Advocate,
for the appellant.

Appellant Satish Kumar, who is son of deceased defendant No.2 Sohan Lal, has filed this Regular Second Appeal against the judgments and decree passed by both the courts below, whereby suit filed by the plaintiff-respondent No.1 Vinod Kumar for possession by way of redemption of the mortgage has been decreed.

2. I have heard counsel for the appellant and gone through the impugned judgments and decree, passed by both the courts below.

3. Plaintiff Vinod Kumar filed suit for possession alleging therein that he and his mother Shanti Devi were owners in possession of the shop in question, which was mortgaged to Pawan Kumar-defendant No.1 for a consideration of Rs.15,000/- vide registered mortgage deed dated 26.3.1985. It is further alleged that subsequently, the mortgagee Pawan Kumar sub-mortgaged the shop to Sohan Lal vide registered mortgage deed dated 27.4.1988. Hence, the suit for possession by way of redemption of the mortgage of shop was filed. The mortgagee Pawan Kumar did not contest the suit. However, Sohan Lal, father of the appellant, contested the suit on the plea that Hem Raj, father of the plaintiff, was the owner of the shop and he had taken the said shop on rent from him at the rate of Rs. 3,250/- half

yearly**,** though it has not been specifically stated that in which year this shop was taken on rent. It is further alleged that the plaintiff Vinod Kumar has admitted this fact in the family settlement dated 20.11.1988 and in his affidavit dated 7.8.1990.

4. Except placing on record two receipts Ex.D1 and Ex.D2, the appellant did not lead any other evidence to prove that his father Sohan Lal was tenant under Hem Raj, father of the plaintiff. Even when a specific question was asked to counsel for the appellant that when the plaintiff appeared in the witness box, whether the family settlement dated 20.11.1988 and affidavit dated 7.8.1990 were put to him. He has replied that these documents and even the receipts Ex.D1 and Ex.D2 were not put to the plaintiff. The courts below, after appreciating the evidence available on record, have come to the conclusion that defendant No.2 has failed to prove the alleged tenancy. On the other hand, it has been found that the mortgage deed executed by the plaintiff in favour of Pawan Kumar and another mortgage deed executed by Pawan Kumar in favour of Sohan Lal have been duly proved. On the basis of these findings of fact, suit of the plaintiff has been decreed by both the courts below.

4. Counsel for the appellant could not point out any illegality or infirmity in the impugned judgments and mis-reading of evidence by the courts below. No substantial question of law is involved in this appeal.

5. Dismissed.

April 16, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**